

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

MARKET TEST OF EXPERIMENTAL PRODUCT-  
GLOBAL ECOMMERCE MARKETPLACE (GEM)  
NON-PUBLISHED RATES

Docket No. MT2016-1

**NOTICE OF THE UNITED STATES POSTAL SERVICE OF  
MARKET TEST OF EXPERIMENTAL PRODUCT-  
GLOBAL ECOMMERCE MARKETPLACE (GEM) MERCHANT SOLUTION AND  
NOTICE OF FILING GEM MERCHANT MODEL CONTRACT AND APPLICATION  
FOR NON-PUBLIC TREATMENT OF MATERIALS FILED UNDER SEAL  
(March 16, 2016)**

Pursuant to 39 U.S.C. 3641, the United States Postal Service hereby gives notice that it intends to conduct a test of an experimental competitive product, named Global eCommerce Marketplace (GeM) Merchant product (in the following, “GeM Merchant”). In support of this Request and Notice, the Postal Service has included the following attachments with this filing:

- Attachment 1: Application for Non-Public Treatment of Materials Filed Under Seal;
- Attachment 2: Mail Classification Schedule Language for GeM;
- Attachment 3: Redacted GeM Merchant Model Contract<sup>1</sup>; and
- Attachment 4: Redacted Summary of GeM price ranges

Unredacted versions of the Model Contract and the financial estimates are being filed separately with the Commission under seal.

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<sup>1</sup> This model contract will be subject to change during the extent of the market test based on customer negotiations and evolution of the market test.

## **I. Introduction**

GeM Merchant represents the Postal Service's eCommerce solution to remove the uncertainty and complexity risks facing US online merchants and their international consumers through an easy-to-use, feature-rich solution. This would constitute a novel service not currently offered by the Postal Service to the public, but now available from a host of other suppliers in the marketplace.<sup>2</sup> Under GeM Merchant, overseas buyers will purchase items from an e-commerce merchant website within the United States that may be integrated with software designed to calculate destination country duties and taxes. At time of purchase, the buyer would be able to prepay the estimated duties and taxes that will be assessed by the foreign country's customs agency once the shipment arrives in the foreign destination. The customer will then receive the order and prepare the item for domestic shipment to the GeM processing facility. Once the item arrives at the processing facility, the Postal Service, or its supplier, will inspect the item for verification and security. The Postal Service, or its supplier, will then prepare the item for international shipment to the address of the overseas buyer and arrange for delivery to the addressee.

During the market test, GeM Merchant will be offered to a limited number of U.S. merchants through negotiated service agreements (NSAs) and will have features including, but not limited to, localization, export compliance, delivery speed and targeted marketing. By implementing a market test, the Postal Service will be able to assess the revenue potential, the competitive price points, and if and how the solution should be further expanded.

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<sup>2</sup> The Postal Service notes that it did conduct an operations test of the GeM model; however this test was limited in scope and duration, and was performed solely to determine the operational viability of the GeM product.

## **II. Consistency with Section 3641 Criteria**

Section 3641 of title 39 of the U.S. Code and 39 C.F.R. § 3035.3 provide the criteria that a market test must meet. As explained below, the Postal Service has determined that the GeM Merchant market test would satisfy these requirements:

- The product is significantly different from all products offered by the Postal Service within the two-year period preceding the start of the test (39 U.S.C. § 3641(b)(1) and 39 C.F.R. § 3035.3(a)(1)(i)).
- The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns (39 U.S.C. § 3641(b)(2) and 39 C.F.R. § 3035.3(a)(1)(ii)).
- The Postal Service correctly identifies the product as competitive (39 U.S.C. § 3641(b)(3) and 39 C.F.R. § 3035.3(a)(1)(iii)).
- The duration of the market test will not exceed 24 months, unless the Postal Service requests an extension from the Commission (39 U.S.C. § 3641(d)(1) and 39 C.F.R. § 3035.10).
- The annual revenues received by the Postal Service from this market test may exceed \$10,000,000 (as adjusted for inflation) in any fiscal year, and the Postal Service will request a waiver to the \$50,000,000 Adjusted Limitation in any fiscal year per the Commission's rules at a future time if necessary (39 U.S.C. § 3641 and 39 C.F.R. § 3035.15).

#### A. Significantly Different Product

The GeM Merchant product will allow consumers abroad to purchase online from specific retailers with prepayment of the estimated duties and taxes that will be assessed by the foreign country's customs agency once the shipment arrives in the foreign destination. The ability for a customer to prepay estimated duties and taxes at the time of purchase is a new feature for the Postal Service and will allow merchants based in the United States access to an international delivery solution that includes these critical features. Merchants may now be able to provide customers with a single cost for the item, to include the shipping charges and the estimated duties and taxes to be paid to the foreign customs agency. Customers using this shipping solution will have transparency, at the time of purchase, as to the entire transaction costs and will not be subject to additional and unknown costs for duties and taxes at the time of delivery. At present, the Postal Service does not offer such a solution to merchants and international customers.<sup>3</sup>

By way of contrast, using the current international mail stream, recipients in a foreign destination may be required to pay duties and/or taxes prior to receipt of their items at the time of delivery. This creates a situation in which customers purchase an item and pay for it and shipping with the merchant and are then required to pay an additional, and unknown, amount at delivery. This uncertainty may reduce the likelihood that a foreign customer purchases from merchants in the United States and thereby limits the Postal Service's potential outbound international mail volume. Thus,

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<sup>3</sup> The Postal Service may also offer the GeM Merchant model with estimation of duties and taxes to be paid by the end consumer but without prepayment of such estimated duties and taxes at the time of purchase..

the Postal Service intends that this new service provide a means for customers abroad to participate in the U.S. e-commerce marketplace and it allows merchants that do not currently offer international shipping to do so.

B. No Inappropriate Market Disruption

There is no reasonable expectation that the Postal Service's GeM Merchant offering would create an "unfair or otherwise inappropriate" competitive advantage for the Postal Service or any mailer, with regard to any other party (including small businesses). The service offering is designed to improve the international experience for merchants and recipients, and thereby generate more international package deliveries that do not currently exist within the postal system. At present, there are at least four companies offering similar end-to-end services

With respect to any unfair or otherwise inappropriate competitive advantage with regard to small businesses, the Postal Service, in fact, has contracted with one of the only remaining small businesses that is offering the same end-to-end service. While other small businesses offer niche regional and freight-forwarding services, these businesses may serve a different market than the end-to-end GeM Merchant product. For example, these businesses do not typically contract with merchants and provide direct customer integration at the time of purchase. Accordingly, the GeM Merchant market test does not compete directly with these small businesses, and the Postal Service has thus not identified any unfair or otherwise inappropriate competitive advantage that may be attributed to it as a result of this market test.

### C. Correct Characterization as Competitive

The Postal Service considers this experimental product to be competitive, as it is designed for international packages that do not fall under the Private Express Statutes (PES). The product was created to facilitate the shipping of merchandise in e-commerce, and thus the contents of GeM are unlikely to contain any letters. The Postal Service submits that international package delivery is a component of the highly-competitive package services market. Major competitors in the shipping industry have products for facilitating outbound international shipments with duties and taxes paid at the time of purchase. As such, significant competition can be found in the outbound international package delivery marketplace, and the market test should be properly categorized as competitive.

### D. Duration of Market Test and Application under 3641(d)

The market test will begin on or shortly after April 30, 2016.<sup>4</sup> The test will run for two calendar years. For this purpose, the Postal Service considers that it will offer negotiated service agreements to customers during the two year market test period. These contracts will have standard one year terms. To the extent negotiated service agreements executed in the latter half of the two year period have terms that extend beyond the two year period, the Postal Service respectfully requests that this notice serve as an application for an extension under 39 U.S.C. 3641(d).<sup>5</sup> The Postal Service would be unable to gauge the desirability of the product if it were limited to contracts that must expire within the 2 year market test period. The extension would only be

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<sup>4</sup> The Postal Service intends to file a notice with the Commission with a more definitive date once the actual start date has been determined.

<sup>5</sup> See, for example, the Postal Regulatory Commission granting the extension request upon filing of the IMRS market test. PRC Order 1806, Order Authorizing Market Test to Proceed and Granting Extension, Docket MT2013-2, August 12, 2013.

requested to satisfy existing contractual obligations; no new agreements would be initiated with merchants after two years. Instead, if the market test is successful, the Postal Service would seek to reclassify GeM as a permanent product.

#### E. Total Revenues from Market Test

Based on current projections, the Postal Service is not requesting a waiver of the \$10,000,000 Adjusted Limitation on revenue pursuant to 39 C.F.R. § 3035.16 at this time. The Postal Service is providing its revenue expectations of the GeM market test under seal with the Commission. Should the Postal Service approach the cap, it will furnish appropriate notice to the Commission and submit an application for exemption under 39 U.S.C. 3641(e)(2) as provided in 39 C.F.R. § 3035.16.

#### F. Market Test Scope

The Postal Service generally does not believe that the geographical scope analysis is germane to the GeM Merchant market test, as it is an international product that is offered through an NSA. There is no retail service offering for this service to the U.S. public. Nevertheless, at this time, the Postal Service intends to offer GeM Merchant using only two processing locations and to execute contracts with a relatively small number of merchants (*i.e.* less than one percent of the overall U.S. merchant target segment).

#### G. Summary of Statutory Criteria

As discussed above, the GeM Merchant market test is likely to benefit the public and meet an expected demand. Moreover, the product is likely to contribute to the financial stability of the Postal Service, by generating more international package mailings that do not currently move within the postal system. GeM Merchant differs

from other services currently offered and would enhance the market and opportunities for outbound international business.

### **III. Data Collection**

Data would be reported on a quarterly basis to include all current contracts. Spreadsheets would include the costs, revenues, and volumes associated with each agreement, as set forth in 39 C.F.R. 3035.20.

### **IV. Application for Non-Public Treatment**

As Attachment 1 to this Request and Notice, the Postal Service files its application for non-public treatment of materials filed under seal. Consistent with the Commission's treatment of other international Negotiated Service Agreements, the Postal Service anticipates providing to the Commission the customer agreements as they are signed. Information in the GeM Merchant customer agreement is considered to be confidential because of the commercially sensitive nature of the information and its identification of a particular customer. The Postal Service is including with this filing as Attachment 3, the GeM Merchant Model Agreement. The application for non-public treatment attached to this notice addresses the redactions to future filings of signed GeM Merchant agreements as well. When the Postal Service files actual customer agreements with the Commission in this docket, the Postal Service will rely on the application for non-public treatment included as Attachment 1 to this filing for protection of the information redacted from those materials. A full discussion of the requested elements of the application appears in Attachment 1.



## **V. Conclusion**

As discussed above and in the attachments, the Postal Service submits that the market test for GeM complies with the applicable statutory criteria.

Respectfully submitted,

UNITED STATES POSTAL SERVICE  
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March 16, 2016

## **APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The materials pertain to a request that Global eCommerce Marketplace (GeM) Merchant product be added to the competitive product list within the Mail Classification Schedule (MCS) as a Market Test. The Postal Service is filing separately under seal with the Commission unredacted versions of the GeM Merchant model contract and the rates and revenue estimate. The Postal Service has filed a redacted version of each with the Request and Notice.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

### **(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);**

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(3) and (4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).<sup>1</sup> Because the portions of materials filed non-publicly in this docket fall

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<sup>1</sup> The Commission has indicated that “likely commercial injury” should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement

within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

**(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

Third parties that may have a proprietary interest in the information in this filing include customers who sign contracts to participate in the market test and the Postal Service's supplier(s) under contract to the Postal Service. Article 12.1 of the model contract provides each customer with notice of the Postal Service's intent to file the agreement with the Commission and its intent to seek non-public treatment of the information the Postal Service determines may be withheld from public disclosure. The notice gives the customer information about how to raise its confidentiality concerns directly with the Commission.

The identification of the future customers and suppliers is sensitive business information. As such, the Postal Service identifies a Postal Service employee who will provide notice and serve as point of contact to both customers and affected third parties, such as supplier(s). The Postal Service designates Franca Davis, Executive Director of International Strategy and Development, available at [franca.s.davis@usps.gov](mailto:franca.s.davis@usps.gov) and (202) 268-5459.

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interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

**(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;**

As part of its initial filing for the GeM Merchant Market Test, the Postal Service is providing a general estimate of the rate ranges that will be used to prepare prices for individual customers, as well as a revenue estimate. The Postal Service is also providing an unredacted version of the model customer agreement. Finally, as part of its data reporting plan for the market test, the Postal Service will be providing, on a quarterly basis, data collection reports with costs, revenues and volumes data.

The nonpublic material and redactions to the material identified above protect sensitive commercial information concerning revenues and the non-published rates themselves. Additionally, redacted information in the agreement includes business sensitive information that reveals the specific processes and practices that will be employed in the provision of the services under the market test.

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

The nonpublic material and redactions to the material identified above include the Postal Service's specific non-published rate information and its future data collection reports with costs, revenues and volumes data, which are highly confidential in the business world. If this information were made public, the Postal Service's competitors would have the advantage of knowing the range of prices that may be offered by the Postal Service to its GeM Merchant customers. Thus, competitors would be able to take advantage of the information to offer lower pricing to the GeM Merchant customers, while subsidizing any losses with profits from other customers. Eventually, this could freeze the Postal Service out of the international end-to-end market.

Potential customers could also take advantage of the information in negotiating the specific rates to be applied to their circumstances. They could demand the absolute floor, when it would otherwise be possible in some cases for the Postal Service to offer a higher, but still competitive rate. Further, the customer-identifying information redacted from the merchant agreements to be filed in the future could be used by competitors to target their marketing efforts on current USPS customers.

Finally, the Postal Service may file data collection reports that may reveal the unit costs of the Postal Service, which in turn may represent the unit prices of suppliers. Publication of this information could undermine the suppliers' ability to compete in future procurements and cause competitive harm to the suppliers in their position in the marketplace.

**(5) At least one specific hypothetical, illustrative example of each alleged harm;**

Identified harm: Revealing customer identifying information would enable competitors to target the customers for sales and marketing purposes.

Hypothetical: The identity of a GeM Merchant is revealed to the public. Another expedited delivery service has an employee monitoring the filing of GeM agreements and passing along the information to its sales function. The competitor's sales representatives can then quickly contact the Postal Service's customer and offer the customer lower rates or other incentives to terminate its contract with the USPS in favor of using the competitor's services.

Identified harm: Public disclosure of potential rates, revenue projections, costs, volumes data and data collection report information would be used by competitors to the detriment of the Postal Service.

Hypothetical: A competitor offering an end-to-end service obtains a copy of the potential rates or future from the Postal Regulatory Commission's website. The competing service reviews the rates and then sets its own rates for products similar to what the Postal Service offers its GeM Merchant customers under the Postal Service's rates. The competing service promotes its ability to beat the Postal Service on price for international end-to-end services. By sustaining this below-market strategy for a relatively short period of time, the competitor, or all of the Postal Service's competitors acting in a likewise fashion, would freeze the Postal Service out of the business-to-customer international end-to-end services market for which the GeM Merchant product is designed. Similarly, information from the data collection reports would allow competitors unfair insight into the Postal Service's market information for the GeM Merchant product.

Identified harm: Public disclosure of the potential or future rate and data collection report information would provide potential customers extraordinary negotiating power to extract lower rates.

Hypothetical: A customer with the potential or future rate information could use it to demand the lowest possible rate, knowing that the Postal Service's approved rates include certain floor amounts. Armed with the rate information, a customer could threaten that it will not use the Postal Service for its international end-to-end service needs if it does not receive the lowest possible rates. This would severely threaten the Postal Service's ability to offer competitive but profitable rates to its customers within the minimum and maximum rates established by the Governors'. Information from the data collection reports would similarly allow customers an unfair bargaining position.

Identified harm: Public disclosure of information in a GeM Merchant contract and its financial workpapers would be used by the customer's competitors to its detriment.

Hypothetical: A firm competing with the customer obtains a copy of the unredacted version of a GeM Merchant contract and financial workpapers from the Postal Regulatory Commission's website. The competitor analyzes the prices and the workpapers to assess the customer's underlying costs, volumes, and volume distribution for the corresponding delivery products. The competitor uses that information to (i) conduct market intelligence on the customer's business practices, and (ii) develop lower-cost alternatives using the customer's mailing costs as a baseline.

Identified harm: Public disclosure of any cost, volume and revenue data concerning GeM Merchant agreements that the Commission may require the Postal Service to file after the contract's expiration would give competitors a marketing advantage.

Hypothetical: A competitor could use any cost, volume and revenue data associated with these agreements, which the Commission may require the Postal Service to file in this docket, to "qualify" potential customers. The competitor might focus its marketing efforts only on customers that have a certain mailing profile, and use information in the performance report to determine whether a customer met that profile.

Identified harm: Revealing supplier cost information would enable competitors to target the supplier's Postal contracts, as well as other customers for sales and marketing purposes.

Hypothetical: The financial information of a GeM Merchant supplier is revealed to the public. A competing enterprise has an employee monitoring the filing of GeM agreements and passing along the information to its sales function. The competitor's sales representatives can then quickly contact the Postal Service and attempt to undercut the supplier in related or unrelated matters. Additionally, the competitor could

contact the supplier's customers and offer the customer lower rates or other incentives to terminate its contract with the supplier in favor of using the competitor's services.

**(6) The extent of protection from public disclosure deemed to be necessary;**

The Postal Service maintains that the nonpublic material and redacted portions of the material filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international end-to-end products (including both private sector integrators and foreign postal administrations), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar products should not be provided access to the non-public materials.

**(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof;**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

**(8) Any other factors or reasons relevant to support the application.**

The Postal Service plans to file future customer agreements in this docket. The Postal Service considers this Application sufficient to fulfill its regulatory requirements for justifying its determinations that the information redacted from those materials should be treated as non-public.

***Conclusion***

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.





**CHANGES TO THE  
MAIL CLASSIFICATION SCHEDULE (MCS)**  
(Additions are underlined and deletions are marked with strike-through)

**MARCH 16, 2016**

## PART B

### COMPETITIVE PRODUCTS

#### 2000 COMPETITIVE PRODUCT LIST

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#### 2001 COMPETITIVE PRODUCT DESCRIPTIONS

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#### 2800 MARKET TESTS

\* \* \* \* \*

#### 2804 Global eCommerce Marketplace (GeM)

Reference

Docket No. MT2016-1

PRC Order No. XXXXX

Expires

XXXXX

**MARKET TEST OF SERVICES  
BETWEEN THE UNITED STATES POSTAL SERVICE  
AND [CUSTOMER'S LEGAL NAME]**

This Agreement ("Agreement"), is between [Customer's Legal Name], a corporation, with offices located at [Customer's corporate address], and/or its affiliates ("the Customer"), and the United States Postal Service, an independent establishment of the Executive Branch of the United States government, with its principal offices at 475 L'Enfant Plaza, SW, Washington, DC 20260 ("Postal Service"). The Customer and the Postal Service may be referred to individually as a "Party" and together as the "Parties." This Agreement is being made in order to conduct an market test with the Customer for cross-border delivery services, including export and import services (referred to by the Postal Service as Global e-Commerce Marketplace Merchant product ("GeM Merchant"), to be offered by the Postal Service. The market test will validate the potential market for end-to-end cross-border delivery services offered by the Postal Service, under the terms and conditions set forth below.

**RECITALS**

1. [REDACTED]

2. To complete such arrangement, the Parties are entering into this Agreement;

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the Postal Service and the Customer agree as follows:

1. **Definitions and Postage Payment.**

- 1.1. Definitions:

- 1.1.1. Conditions Precedent. Operational and technological means necessary for each Party to perform its obligations under this Agreement, without which one Party or both of the Parties would find it impossible to perform in good faith. Including, for example, [REDACTED]

- 1.1.2. [REDACTED]

- 1.1.3. [REDACTED]

- 1.1.4. Customer. [Customer's Legal Name]

- 1.1.5. [REDACTED]

[REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

1.1.6. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

1.1.7. Destination Country. The country or countries to which the Items are sent under this Agreement. Items sent under this Agreement may not be addressed to a destination country included in Country Groups E-1 or E-2 under Supplement No. 1 to Title 15, Code of Federal Regulations.

1.1.8. Digital Service. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

1.1.9. Effective Date. The later of the two dates on which the Agreement is signed by the Parties, or the date on which it is signed, if both Parties sign on the same date.

1.1.10. **Implementation Date.** The start of the one year term of the contract as determined by the later of the date agreed upon by the Parties after which all Conditions Precedent have been satisfied and the Effective Date.

[illegible]

### 1.2 Postage Payment:

1.2.1 Shipping Items from the Customer [REDACTED] Items delivered [REDACTED]  
[REDACTED] in the market test will be mailed [REDACTED] by the  
Customer [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

1.2.2

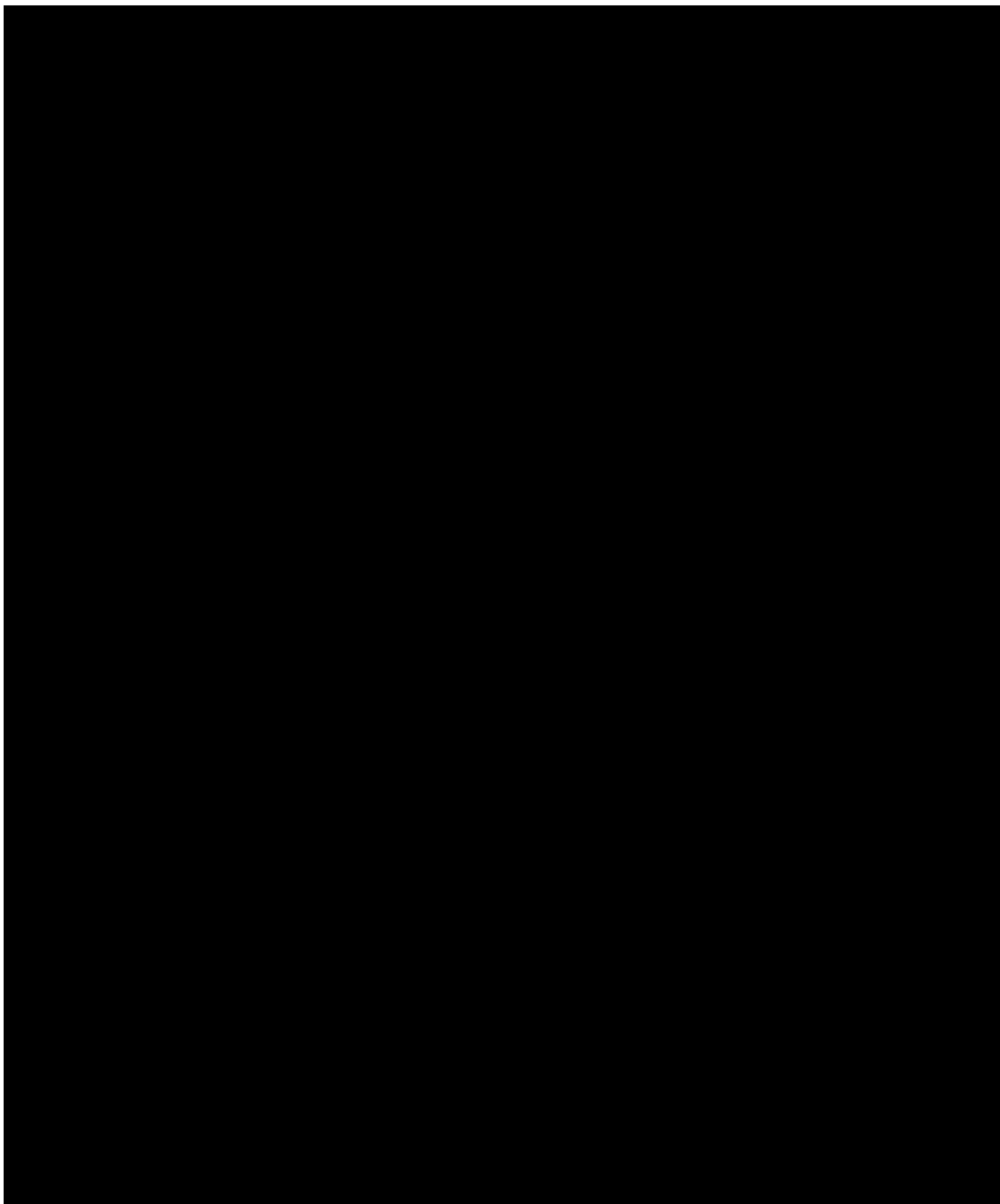


1.2.3



2. **Customer Responsibilities**

2.1



2.2

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2.6

2.7

3. **Postal Service Responsibilities**

3.1. [REDACTED]

3.1.1. [REDACTED]

3.1.2. [REDACTED]

3.1.3. [REDACTED]

3.1.4. [REDACTED]

3.1.5. [REDACTED]

3.1.5.1. [REDACTED]

3.1.5.2. [REDACTED]

4. **Items as Mail and Related Matters.**

4.1

4.2

4.3

4.4

4.5

5. **Adjustments and/or Amendments.**

5.1 Any changes or supplements to this Agreement must be in writing and signed by authorized representatives of both Parties.

6.

6.1

7. **Term, Termination and Sovereign Acts.**

7.1 **Term.** The term of the Agreement shall begin when all Conditions Precedent have been met on a date mutually agreed by the Parties, but not before the



Effective Date of the Agreement. The terms of this Agreement shall expire [REDACTED]  
[REDACTED]

- 7.2 Termination. Either Party may terminate this Agreement, [REDACTED]  
[REDACTED] during the duration of the Agreement, unless earlier termination is required by law, valid order or regulation. [REDACTED]  
[REDACTED] Such termination shall not affect the survival of certain terms and conditions as set forth in Article 15.6, nor shall it affect the Parties' obligations to complete performance of their responsibilities related to all pre-termination transactions under this Agreement.

7.3 Modification of the Agreement.

- 7.3.1 Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if placed in writing and signed by each Party.
- 7.3.2 Modifications may be contingent upon any and all necessary approvals by the Postal Service management's executive committee, the Board of Governors of the Postal Service, the Governors of the Postal Service, the Postal Regulatory Commission, and/or any other governmental body with oversight responsibility for the Postal Service.
- 7.3.3 If such approvals are required, the modifications will not become effective until such time as all necessary approvals are obtained.
- 7.3.4 The Postal Service will notify the Mailer of the date the modification becomes effective within thirty (30) days after receiving the approval of the entities that have oversight responsibility for the Postal Service.
- 7.3.5 The Postal Service shall have no obligation to notify the Mailer of the status of the approval process or of potential fulfillment of the approval process.

- 7.4 Sovereign Acts. The Postal Service and the Customer acknowledge and agree that this Agreement is subject to any legislation that might be enacted by the Congress of the United States or any orders or regulations that might be promulgated by any agency, branch, or independent establishment of the United States Government; this includes the orders or regulations of the Postal Regulatory Commission ("PRC"). The Parties agree that in the event that this Agreement is terminated as set forth in the preceding sentence, or in the event that either Party is enjoined from proceeding with this Agreement by any court or oversight body of competent jurisdiction, such Party shall not be subject to any liability by reason of such termination or injunction.

7.5 Conditions Precedent.

- 7.5.1 The Parties acknowledge and understand that all obligations of the Postal Service under this Agreement, including the prices listed in Appendix B, shall be contingent on the Postal Service receiving approvals hereinafter ("Conditions Precedent") from one or more internal and external bodies that have oversight responsibilities. Conditions Precedent may include, but are not limited to: approvals or, if applicable,

non-objection, from responsible Postal Service management officials, the Postal Service Board of Governors, the Postal Service Governors, the Postal Regulatory Commission, and/or any other governmental body with oversight responsibility for the Postal Service. The Parties acknowledge that the Agreement may not be approved by such individuals or bodies. Until such time that all Conditions Precedent are fulfilled that are necessary to allow the Postal Service to provide the products or services contemplated under the Agreement, no obligation shall exist for the Postal Service and no benefit shall inure to either Party.

- 7.5.2 In the event that the Conditions Precedent are not fulfilled, the Postal Service shall have no liability, which shall include no obligation to pay costs associated with any action taken by the Mailer prior to the Effective Date of the Agreement. Further, in the event of termination of the Agreement or the failure of any Condition Precedent, the Postal Service shall not be held liable for any damages including, without limitation, actual; special; indirect; incidental; punitive; consequential; or any other damages, which shall include but not be limited to damages for loss of business profits; business interruption; any other loss; and/or for costs incurred by either Party attributable to such non-approval such as attorney's fees.

8. **Market Test Review.**

- 8.1 [REDACTED]

9. **Indemnification.**

- 9.1 The Customer will indemnify and hold the Postal Service harmless from any claims by third-Parties concerning the market test for damages, costs and expenses in relation it. The Customer shall indemnify the Postal Service for, and hold it harmless from, any losses, claims, damages or liabilities suffered by the Postal Service arising out of any claims asserted against the Postal Service by any third party that arise out of or relate to (i) the failure by the indemnifying party to perform its obligations under this Agreement or breach by the indemnifying party of its representations or warranties under this Agreement, including without limitation the representations and warranties found in paragraph 13, below; (ii) the infringement by the Customer of any third party's intellectual property, tangible and/or intangible, or proprietary rights by property appearing on or in any material related to the operations test, and (iii) any violation of a third party's rights by the indemnifying Party arising out of this Agreement. The Customer shall reimburse the Postal Service for all reasonable expenses (including, without limitation, attorneys' fees) incurred in conjunction with the investigation or

defense of such claims, whether or not the Postal Service is named in such proceeding, provided that the Postal Service notifies the Customer promptly in writing of a claim. The Postal Service shall reasonably cooperate (at the Customer's expense) in the collection of information necessary to defend or settle any such claim. The Postal Service shall not effect any settlement of, or make any admission of liability in connection with, any pending or threatened claim or proceeding as to which indemnification is sought under this Section without the written consent of the Customer, which written consent shall not be unreasonably withheld. Nothing herein shall affect the authority of the Attorney General or the U.S. Department of Justice.

- 9.2 The Postal Service will defend, indemnify and hold the Customer harmless from any claims by third-parties for damages, costs and expenses from the infringement of any US patent related to the market test. The Postal Service shall reimburse the Customer for all reasonable expenses (including, without limitation, attorneys' fees) incurred in conjunction with the investigation or defense of such claims (including but not limited to administrative, regulatory or judicial proceedings), provided that the Customer notifies the Postal Service promptly in writing of a claim. The Customer shall reasonably cooperate (at the Customer's expense) in the collection of information necessary to defend or settle any such claim. The Customer shall not affect any settlement of, or make any admission of liability in connection with, any pending or threatened claim or proceeding as to which indemnification is sought under this Section without the written consent of the Postal Service, which written consent shall not be unreasonably withheld. Nothing herein shall affect the authority of the Attorney General or the U.S. Department of Justice.

10. **Limitation of Liability.**

- 10.1 Under no circumstances, will either Party be liable to the other for special or consequential damages that result from the Customer's participation in this Agreement or from any matter arising out of this market test. Nor shall either Party be liable to the other for any expenses incurred to satisfy the Conditions Precedent, even if the market test fails to proceed. The Postal Service shall not be liable for fines and penalties for the Customer's [REDACTED] failure to comply with any export laws, rules, or regulations, and the Postal Service shall not be liable for any act or omission by any person not employed or contracted by the Postal Service, including the Customer, [REDACTED].

11. **Power of Attorney**

- 11.1 At its option, the Postal Service may submit customs and other shipment related documentation in the name of the Customer to domestic or foreign customs, postal, or aviation authorities and/or Postal Service agents or suppliers on behalf of the Customer. [REDACTED]

- (1) [REDACTED]  
(2) [REDACTED]  
[REDACTED]  
[REDACTED]  
(3) [REDACTED]

(4) [REDACTED]  
[REDACTED]

- 11.2 This power of attorney remains in full force and effect throughout the duration of the Customer Agreement. The Customer hereby accepts responsibility for all representations made on its behalf by the Postal Service or its agents or suppliers in any connection with any of the Customer's shipments to domestic or foreign customs, postal, or aviation authorities and/or Postal Service agents or suppliers made on behalf of the Customer. The Customer hereby certifies that all statements and information contained in any documentation provided to the Postal Service relating to any of its shipments are complete, comprehensive, and correct. Furthermore, the Customer understands that civil and criminal penalties may be imposed for making false or fraudulent statements or for the violation of any United States laws or regulations on exportation.

12. **Confidential Information.**

- 12.1 The Customer acknowledges that as part of securing approval of this Agreement, and in other subsequent regulatory filings, the Agreement and supporting documentation will be filed with the Postal Regulatory Commission ("Commission") in a docketed proceeding. The Customer authorizes the Postal Service to determine the scope of information that must be made publicly available in any Commission docketed proceeding. The Customer further understands that any unredacted portion of the Agreement or supporting information will be available on the Commission's public website, [www.prc.gov](http://www.prc.gov). In addition, the Postal Service may be required to file information in connection with this Agreement (including revenue, cost, or volume data) in other Commission dockets, including the Commission docket number for the Annual Compliance Report (ACR) for the Postal Service fiscal year(s) in which this Agreement is in effect. Each ACR docket has a distinct docket number, such as ACR201#, in which "201#" signifies the Postal Service fiscal year to which the ACR pertains. The Customer has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22 found on the Commission's website: [www.prc.gov/docs/63/63467/order225.pdf](http://www.prc.gov/docs/63/63467/order225.pdf). At the request of the Customer, the Postal Service will notify the Customer of the docket number of the Commission proceeding to establish the prices in this agreement once assigned.
- 12.2 The Customer's participation in this market test is considered to be confidential information and as such shall not be disclosed outside the Customer's business to any third parties without the express written consent of the Postal Service.

13. **Notices.**

- 13.1 All notices shall be in writing and shall be deemed to be delivered when received by the respective Party at the address set forth below. All notices shall be delivered electronically via email and via Priority Mail Express delivery to the Parties.

For the Postal Service:

Franca Davis,  
Exec Director, International Strategy & Business Development

475 L'Enfant Plaza SW  
Washington, DC 20260

Email: [franca.s.davis@usps.gov](mailto:franca.s.davis@usps.gov)

For the Customer:

[REDACTED]

Email: [REDACTED]

14. **Warranties.**

14.1 Customer: The Customer represents and warrants all of the following:

14.1.1 The Customer is a company duly organized, validly existing and in good standing under the laws of the state and/or country of its principal office, with full power and authority to execute and deliver this Agreement and to perform its obligations, and maintains its principal executive office at the address set forth herein. The execution, delivery and performance of this Agreement have been duly authorized by all necessary actions of the Customer.

14.1.2 The Customer shall comply with and act in accordance with: (A) any and all applicable laws and other legal obligations applicable to this Agreement; (B) conventions and treaties to which the United States or any legal subdivision thereof is a party (individually and collectively "Law" or "Laws"); and (C) the requirements of this Agreement.

14.1.3 The making of this Agreement by the Customer does not violate any agreement, right or obligation between the Customer and any other person, entity, firm or corporation; and neither the Customer's execution and delivery of this Agreement nor the Customer's performance of any or all of the terms, obligations and services herein shall breach, be in conflict with or constitute a default under any agreement or commitment to which the Customer is a party or violate any Law applicable to the Customer.

14.1.4 Unless otherwise approved by the Postal Service (such approval not to be unreasonably withheld), the Customer shall not disclaim any warranty whether contained herein or arising by operation of law, and any attempted disclaimer shall be deemed null and void.

14.1.5 To the best of the Customer's knowledge, there is no pending or threatened litigation, which may affect the legality, validity or enforceability of this Agreement or any of the transactions contemplated herein or the Customer's ability to fully perform its obligations herein.

14.1.6 The Customer shall not misuse or take any action or conduct its operations in such manner as to bring public ridicule, contempt, censure or disparagement upon the Postal Service.

14.1.7 None of the representations or warranties made by the Customer in this Agreement as of the Effective Date contains any untrue statement of a

material fact or omits any material fact necessary to make such statements accurate in light of the circumstances under which they were made.

- 14.2 The Postal Service: The Postal Service represents and warrants all of the following:
- 14.2.1 It owns or controls the rights granted herein and possess full power and authority to execute and deliver this Agreement and to perform its obligations.
  - 14.2.2 It is an independent establishment of the executive branch of the United States government duly organized, with full power and authority to execute and deliver this Agreement and to perform its obligations, and maintains its principal executive office at the address set forth above. The execution, delivery and performance of this Agreement have been duly authorized by all necessary actions of the Postal Service.
  - 14.2.3 The making of this Agreement by the Postal Service does not violate any agreement to which the Postal Service is a party, or violate any Law applicable to the Postal Service.
  - 14.2.4 The Postal Service does not make any warranties or representations as to the popularity, success or continuing exploitation of or marketing and advertising budget with respect to the operations test and makes no warranty or representation as to the net sales or profits the Customer shall derive under this Agreement.
  - 14.2.5 To the best of the Postal Service's knowledge, there is no pending or threatened litigation, which may affect the legality, validity or enforceability of this Agreement or the Postal Service's ability to fully perform its obligations herein.

15. **General.**

- 15.1 Independent Contractors. The Parties and their respective personnel are and shall be independent contractors and are not partners, joint venturers or agents of one another.
- 15.2 Assignment. This Agreement shall be binding upon the Parties' respective successors and permitted assigns. No Party may assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, without the prior written permission of the other Party.
- 15.3 Waiver. No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the Parties against whom such waiver is sought to be enforced. No delay in exercising, no course of dealing with respect to, or no partial exercise of any right or remedy hereunder shall constitute a waiver of any other right or remedy, or future exercise thereof.
- 15.4 Severability. If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.
- 15.5 Governing Law. This Agreement shall be governed in all respects by the federal laws of the United States.

- 15.6 Survival. The definitions of this Agreement and the respective rights and obligations of the Parties relating to confidentiality, non-disclosure, limitation of liability, indemnification, governing law and contractual construction shall survive any termination or expiration of this Agreement. Moreover, the obligations of the Parties with respect to confidentiality will expire ten (10) years from the date of termination or expiration of this Agreement.
- 15.7 Force Majeure. If the performance of any part of this Agreement by any Party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, terrorism, war, disruption of the postal system, labor dispute, judicial or governmental action, natural disaster or any other substantially similar causes beyond the control of the Party, that Party shall be excused from such; provided that the Party gives the other Party written notice thereof within five (5) business days of any such event or occurrence and exercises its best efforts to resume performance or cure as soon as possible.
- 15.8 Breach. The failure of either Party to perform its material obligations under this Agreement constitutes a basis for Termination under Section 7.2 of this Agreement. Failure of either Party or both of them to fulfill the Conditions Precedent shall not constitute a breach of the Agreement and shall not result in any liability.
- 15.9 Counterparts. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original, and such counterparts together will constitute one and the same agreement.
- 15.10 Headings. The Section and paragraph headings are provided for the convenience of the parties only and shall not be construed to limit or vary the terms of the Agreement in any way. Inadvertent errors in numerical references to the paragraph numbers shall be corrected according to their clear meaning.
- 15.11 Third Party Beneficiary. Each party intends that this Agreement shall not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Postal Service and the Customer.
- 15.12 Entire Agreement. This Agreement, including the appendixes, represents the entire agreement between the Postal Service and the Customer regarding the operational test and may be amended only by mutual consent of the Parties' authorized representatives in writing.

16. **Dispute Resolution Mechanism.**

- 16.1 [REDACTED]

17. **Consent to Jurisdiction.**

17.1 With respect to any suit, action or other proceedings relating to the Agreement that are not subject to the Dispute Resolution Mechanism set forth above (collectively "Proceedings"), the Postal Service and the Customer each irrevocably (i) submit to the exclusive personal jurisdiction of the United States District Court for the District of Columbia and (ii) waive any objection that it may have at any time to the laying of venue of any Proceedings brought in such court, waive any claim that such Proceedings have been brought in an inconvenient forum and further waive the right to object, with respect to such Proceedings, that such court does not have personal jurisdiction over such party.

18. **Execution.**

18.1 Each Party represents that it has caused this Agreement to be executed on its behalf as of the date written below by a representative empowered to bind that Party with respect to the undertakings and obligations contained herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date this agreement is signed.

**[CUSTOMER'S] REAL NAME**

**UNITED STATES POSTAL SERVICE**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



Appendix A  
Return Policy

[REDACTED]

**Expedited and Deferred Price Ranges for GeM Merchant**

<b>Expedited</b>	<b>GeM Low</b>	<b>GeM High</b>
Canada		
Mexico		
Western Europe		
Northeast Asia		
Oceania		
Latin America / Caribbean		
Eastern Europe / CIS		
Southeast Asia		
Southwest Asia / Middle East		
Africa		

<b>Deferred</b>	<b>GeM Low</b>	<b>GeM High</b>
Canada		
Mexico		
Western Europe		
Northeast Asia		
Oceania		
Latin America / Caribbean		
Eastern Europe / CIS		
Southeast Asia		
Southwest Asia / Middle East		
Africa		

**Estimated Annual Revenue for GeM Merchant**

